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FEB 06 2006

In re Application of	:	OFFICE OF PETITIONS
George M. Huggins	:	
Application No. 10/781,483	:	
Filed: February 17, 2004	:	DECISION ON
For: PICKUP TAILGATE LOADING RAMP	:	PETITION

This is a decision in response to the Petition to Revive the application under 37 CFR 1.137(b), filed August 10, 2005.

This Petition is hereby **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly respond to the non-final Office action, mailed October 20, 2004. The Office action set a three (3) month period for reply. Extensions of time under 37 CFR 1.136(a) were available. No response having been received, the application became abandoned on January 11, 2005. A Notice of Abandonment was mailed June 2, 2005.

Applicant files the instant petition and asserts that the Office action appears to be based upon the parent application, of which the above-identified application is a Continuation-in-Part ("CIP"). Applicant correctly notes that the Examiner's October 20, 2004 Office action objected to drawings "because the new drawings alluded to in papers filed on February 17, 2004 are not in the file." Office action at p.2. Applicant asserts, *inter alia*, that "a new set of drawings accompanied the CIP application filed February 17, 2004." Applicant points to further comments in the October 20, 2004 Office action that

appear to be based upon the parent application filing, and not of the above-identified CIP. Applicant has filed application papers with the instant petition that Applicant asserts were putatively filed in this Office on February 17, 2004.

Applicant requests revival of the application and examination *ab initio* of the claim contained in Applicant's CIP application, putatively filed February 17, 2004. Applicant alternatively requests the granting of the instant petition and an opportunity to file a Request for Continued Examination ("RCE").

Analysis and conclusion

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed); (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). Applicant lacks item (1).

As to item (1), A review of the petition reveals that Applicant has failed to adequately support his assertion, that the papers filed on February 17, 2004, are other than those of record in the Office¹. As such, the petition does not include a reply to the Office action and is not grantable. The USPTO file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the USPTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

The best evidence of what was filed on February 17, 2004, is applicant's postcard receipt. "If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO.." MPEP § 503.

¹In a telephone conversation with Petitioner on or about January 7, 2006, the undersigned Attorney discussed the filing of a petition to accord the February 17, 2004 filing date to the papers putatively filed on February 17, 2004; however, to date, no filing date petition has been received in this Office.

Regarding Applicant's request to grant of the instant petition and provide an opportunity to file a RCE, while a RCE is among the acceptable replies for revival of an abandoned application, Applicant has failed to file a RCE, but only requests the opportunity to file a RCE.

In conclusion, Applicant has failed to file the required reply.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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